

1 CHRISTOPHER J. CARR (CA SBN 184076)

2 chris.carr@bakerbotts.com

3 KEVIN M. SADLER (CA SBN 283765)

4 kevin.sadler@bakerbotts.com

5 KEVIN E. VICKERS (CA SBN 310190)

6 kevin.vickers@bakerbotts.com

7 BAKER BOTTS L.L.P.

8 101 California Street, Suite 3600

9 San Francisco, California 94111

10 Telephone: (415) 291-6200

11 Facsimile: (415) 291-6300

12
13 *Attorneys for Mark Sanders and Westpoint Harbor, LLC*

14
15
16 SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

17
18 IN THE MATTER OF:

19
20 VIOLATION REPORT/COMPLAINT FOR THE
21 IMPOSITION OF ADMINISTRATIVE CIVIL
22 PENALTIES No. ER2010.013

23
24 MARK SANDERS AND
25 WESTPOINT HARBOR, LLC
26

DECLARATION OF MARK SANDERS

1 I, Mark Sanders, declare the following:

- 2 1. I am the permittee on San Francisco Bay Conservation and Development Commission
3 (“BCDC”) Permit No. 2002.02 (the “Permit”) and the Chief Executive Officer and
4 registered agent of Westpoint Harbor, LLC (“WPH”). WPH owns and operates the
5 Westpoint Harbor marina (“Westpoint Harbor”). I have personal knowledge of the facts
6 in this declaration, and if called as a witness could competently testify to them.
- 7 2. In the following paragraphs, use of the first-person subject “I” sometimes refers to
8 actions that I personally undertook as an individual and other times refers to actions that I
9 personally undertook as an agent of WPH.
- 10 3. I am familiar with industry standard terminology and practices concerning navigation
11 generally, and the safe and customary operation of a marina, based on my experience as a
12 U.S. Navy Officer, avid recreational boater for more than fifty years, former director of
13 the Marine Science Institute, and current owner of a marina. In the following paragraphs,
14 references to industry practices and standards, industry terminology, and other statements
15 regarding what is commonplace or normal at a marina are based on this experience.
- 16 4. The Westpoint Harbor site has an industrial history that stretches back at least 120 years.
17 The site was home to the Portland Shipbuilding Company, which built concrete ships in
18 the late 1800’s through 1918. The shipbuilders used cement produced from oyster shells
19 and Bay mud on the area that is now Pacific Shores Center, immediately west of
20 Westpoint Harbor’s current site. After use as a shipbuilding yard, the site became a small
21 component of Leslie Salt Company’s operations, which were later purchased by Cargill,
22 Inc.

- 1 5. While serving as a director for the Marine Science Institute, I undertook the task of
2 locating and building a permanent home for the Institute. Before long, many more public
3 and private water-oriented organizations joined the effort, and the project evolved into a
4 full-service marina and boatyard. My hope was to revive recreational boating, providing
5 high-quality facilities for sail and motor boats, as well as every kind of personal
6 watercraft including, paddleboards, kayaks and rowing.
- 7 6. I applied for a permit for Westpoint Harbor from the U.S. Army Corps of Engineers
8 (“USACE”) in 1993. Exhibit 96 attached to the Statement of Defense (the “Statement”)
9 (filed on behalf of myself and WPH in the matter of *Violation Report/Complaint for the*
10 *Imposition of Administrative Civil Penalties No. ER2010.013 Mark Sanders and*
11 *Westpoint Harbor, LLC*) is an accurate copy of the USACE Public Notice for Westpoint
12 Harbor. Statement Exhibit 92 is an accurate copy of the USACE permit received for
13 Westpoint Harbor.
- 14 7. While I worked to obtain the many permits necessary for Westpoint Harbor, I also
15 participated with the City of Redwood City, the Port of Redwood City, and the Division
16 of Boating and Waterways (“DBW”) to remove multiple shipwrecks blocking Westpoint
17 Slough and making it unnavigable (the Aqua-Terra 2 project).
- 18 8. A series of “interagency meetings” were conducted by the USACE well before the Permit
19 was issued. These meetings included all relevant agencies including BCDC, represented
20 by Steve McAdam, Richard Cooper and others. The agencies discussed navigation and
21 navigational aids required, which agencies had jurisdiction, and who would be
22 responsible for designing, installing and maintaining these aids. These meetings together
23 with more detailed discussions with the U.S. Coast Guard (“USCG”) and National

1 Oceanic and Atmospheric Administration (“NOAA”), prior to the issuance of the Permit,
2 resulted in an agreement among all concerned that regular channel markers would be
3 placed over the length of Westpoint Slough, but other buoys and markers in the navigable
4 channel would not be allowed (other than an existing “no wake” buoy and other marks
5 already located in the channel by the Port of Redwood City). The channel is narrow and
6 short and other buoys would present hazards to navigation.

7 9. Buoys in Westpoint Slough as described by BCDC staff (to mark the centerline of the
8 channel) would confuse boaters, pose a clear safety hazard, and be contra to maritime
9 law “rules of the road” (unlike streets, shipping channels are marked on the outside
10 boundaries, not the middle). This of course was well understood by the USCG and
11 NOAA representatives, who detailed the channel marks and locations as well as
12 additional no-wake signage to be used, and made clear that the buoys 100 feet from
13 Greco Island would not be allowed as they would constitute navigational hazards. Buoys
14 installed 100 feet from the salt marsh on Greco Island in fact would be useless: even
15 small buoys require a certain amount of depth to float, and due to the very shallow
16 shoreline of Greco Island and the extreme tidal swing in this area (up to 14 feet), such
17 buoys would only float at extreme high tides (spring tides), and otherwise be on their side
18 and non-functioning. This was clear to the source of this condition, Clyde Morris at the
19 U.S. Fish and Wildlife Service (“USFWS”), who quickly understood and the decision to
20 use standard USFWS signs on the island was adopted. These decisions were non-
21 controversial, as the attendees were familiar with maritime practices.

22 10. Construction of Westpoint Harbor began promptly after I received the BCDC Permit in
23 August 2003. At the time construction began, the land to become Westpoint Harbor

1 consisted of 35-40 feet of saturated mud covered with a thin layer of desiccated material.
2 It could not support the heavy construction equipment needed to excavate the marina
3 basin, and the geotechnical estimate for it to naturally dry and reach final settlement was
4 35 years. In order to condition the land for excavation and achieve final settlement
5 quickly, a process called “wicking” was used to dry the land, rapidly. This “accelerated
6 dewatering” process is very unusual and was able to achieve 95% of the final settlement
7 in less than one year. Excavating 600,000 cubic yards of Bay mud took time, but drying
8 and conditioning of the material took longer than anticipated. This was a “balanced
9 project” in that the excavated material was just enough to create the 24 acres of uplands,
10 so there was no exported dredge material. Drying and compacting this material could
11 only happen in the summer, and as the basin got bigger the drying area got smaller, it
12 ultimately took three years to excavate the majority of the basin, which finished in
13 December 2006.

14 11. In August 2006, the basin experienced a slope failure. The most fragile time for such a
15 large excavation (a 26 acre hole 25 feet from top to bottom) is when it is nearly complete
16 but has not been filled with water which acts to shore up the sides. All work was
17 temporarily halted, the excavation plan modified, and I was able to flood the basin in
18 December 2006, leaving a large “buttress” of material to shore up the sides. This buttress
19 would have to be removed after flooding, adding to the timeline.

20 12. Due to the delays and recognizing that part of the marina could be opened while the site
21 preparation continued, I sought an amendment to the Permit to more practically structure
22 the sequence of activities. Thus Phase 1 was divided into Phase 1A and Phase 1B. At the
23 same time BCDC staff required that the rowing facility be moved to the west side, and

1 the harbor office, service dock (fuel, pumpout) moved to the east side, which required a
2 number of design changes. As a result the marina could open with minimal landside
3 work, while I continued the placement of rip-rap, rocking of roads and parking,
4 installation of utilities, and excavating, drying and compacting of mud. Excavation,
5 drying, and compacting of mud was necessary to complete the basin, and the material
6 was required to get the land portions up to the correct elevation for parking, paths, roads
7 and building sites.

8 13. In 2007 and 2008, I installed the first three docks (docks C, D, and E) at Westpoint
9 Harbor, as authorized under Phase 1A of Permit Amendment No. Three. I also
10 completed other portions of Phase 1A, including a base-rock road, parking and paths
11 from the entrance to the first gangway, making and placing riprap, and installing utilities.
12 As a green project we operated a rock crushing machine for several years to make enough
13 rip rap and base rock for the project. Completing placement of rip rap, excavation of the
14 buttress and placement of the material (getting the site to its final elevation) took until
15 2014 to complete.

16 14. I began construction on Phase 1B in 2007 (overlapping with 1A), and experienced a
17 number of delays. I installed the remainder of the docks (A through Q), including the
18 guest berths, built public access pathways, and installed bioswales and drainage systems.
19 The remainder of Phase 1 streets, parking, utilities and the permanent harbormaster
20 building were completed along with other improvements. Some of the delay was related
21 to the wicking, drying, compacting, and grading activities, weather (three of the longest
22 rainy seasons ever recorded) and dearth of concrete rubble with which to make rip rap.
23 Long after the marina basin was excavated, a large portion of the uplands (the future

1 boatyard and retail areas) remained very wet and muddy and drying involved continuous
2 dozing and disking in one-foot increments (“lifts”). As this occurred the wicks continued
3 to work, forcing water out of the site. At the end, the original surface was down 18 feet
4 below the final marina landscape). Again, this process had to be completed before many
5 surface improvements were possible. In other words, a path several feet below design
6 elevation, on several feet of saturated mud, and under which utilities are to be placed, is
7 impossible — hence the phasing plan. Late in the site development, the Regional Water
8 Quality Control Board (“RWQCB”) stormwater pollution prevention requirements
9 applicable to Westpoint Harbor changed, requiring larger bioswales and delaying
10 completion of several elements, particularly the boatyard and boat launch. While I have
11 constructed most of the improvements authorized under Phase 1B, I have not yet
12 completed Phase 1B in its entirety and some storm drain, irrigation and other elements
13 are in process.

14 15. Boats began using the 145 slips as authorized under Phase 1A in August 2008, but the
15 rest of the docks authorized in Phase 1B had not even been installed at that time. The
16 landing dock for the boat launch was part of the last batch of docks to be built (F,G,H and
17 boatyard docks).

18 16. I hand-delivered the plans required by the Permit. Redwood City required three signed
19 and wet-stamped sets of plans for their review process (Engineering, Planning, Permits)
20 and it was convenient to give the same drawings to BCDC at the same time. Having
21 retired from my technology business, I was 100% committed to the harbor project and it
22 was easy for me to personally deliver the plans.

- 1 17. In October 2003, I hand-delivered Site Preparation Plans covering grading, wicking,
2 riprap, and shoreline protection plans to BCDC staff. Statement Exhibit 25 is an accurate
3 copy of the letter that I sent to Andrea Gaut of BCDC with the Site Preparation Plans.
- 4 18. Shortly after delivering the Site Preparation Plans, I called BCDC to see if I could
5 facilitate review by having my engineer speak directly to the BCDC engineer. Andrea
6 Gaut, the BCDC Coastal Program Analyst, informed me that there was no longer an
7 engineer on staff, so Brad McCrea, BCDC's landscape architect, would probably look at
8 it. Statement Exhibit 26 is an accurate copy of the email I sent to Kent Mitchell and Pete
9 Bohley discussing this issue and includes some markings I made after printing the
10 document for my hardcopy files.
- 11 19. I received initial comments on these Site Preparation Plans from Andrea Gaut, and in
12 response, I updated these plans in December 2003 and hand-delivered them in early
13 2004. Statement Exhibit 27 is an accurate copy of the email I received from Andrea Gaut
14 of BCDC discussing Ms. Gaut's feedback and contains some markings I made after
15 printing the document for my hardcopy files. Statement Exhibit 98 is an accurate copy of
16 the Site Preparation Plans prepared by Bohley Consulting.
- 17 20. I did not receive any feedback concerning the updated Site Preparation Plans until I
18 received a letter from Brad McCrea dated November 3, 2005.
- 19 21. In early 2005, I hand-delivered detailed construction drawings (the "Phase 1 Construction
20 Drawings") to BCDC staff, as well as to Redwood City officials. This submittal included
21 twenty-six sheets of drawings from Bohley Consulting, labeled "Construction Drawings
22 for Westpoint Marina and Boatyard Phase 1." These drawings included grading plans,
23 utilities, parking, roads, public access pathways, the boat launch ramp, the

1 Harbormaster's office, and marina dock systems. BCDC never provided me with
2 received-stamped receipts for the plans I submitted, and by this time I was used to the
3 informal "thank you very much" handling of documents by BCDC staff.

4 22. In August 2005, I received a letter from Jeff Churchill, a BCDC intern. Mr. Churchill's
5 letter stated that BCDC had received the Site Preparation Plans from Redwood City and
6 that "BCDC should not have to obtain final plans from third parties." I did not
7 understand Mr. Churchill's claim that BCDC had not previously received the Site
8 Preparation Plans, since I hand-delivered those plans in 2003, delivered updated Site
9 Preparation Plans in early 2004, and had correspondence with staff concerning the plans.
10 Nonetheless, I requested Bohley Consulting to re-send those same (December 2003) Site
11 Preparation Plans to BCDC staff, and Bohley Consulting did so in October 2005.
12 Statement Exhibit 30 is an accurate copy of the letter that I received from Jeff Churchill
13 of BCDC and contains some markings I made after receiving the document.

14 23. I did not receive any feedback from BCDC staff on either my original or updated 2005
15 submittal of the Phase 1 Construction Drawings. I did however receive considerable
16 feedback from Redwood City officials, and made a number of revisions to the Phase 1
17 Construction Drawings at the direction of Redwood City in 2006, 2007, 2009, and 2011.
18 These changes included specific requirements for underground utilities (in salt
19 impregnated soils corrosion failure is a big issue), and separating parts of the plan into
20 multiple building permits for tracking by the City, and making other changes requested
21 by Redwood City officials. Statement Exhibit 31 is an accurate copy of the letter that my
22 consultant, Pete Bohley received from Jon Lynch of Redwood City and provided to me.
23 This contains some markings I made after receiving the document. Statement Exhibit 33

1 is an accurate copy of the letter that I sent to Jon Lynch of Redwood City concerning
2 changes to the Phase 1 Construction Drawings and contains some markings I made for
3 my hardcopy records.

4 24. I delivered multiple copies of the Phase 1 Construction Drawings to BCDC staff,
5 including original and as-built versions after receiving feedback from Redwood City
6 officials. Statement Exhibit 34 is an accurate copy of the letter and attachments that I
7 sent to Brad McCrea of BCDC discussing construction drawings.

8 25. In October 2005, I hand-delivered complete construction plans for the marina dock
9 system ("dock plans") prepared by Bellingham Marine Industries to BCDC staff. These
10 dock plans covered all in-the-water elements, including pilings, floats, utilities, gangways
11 and abutments. These plans clearly showed the rower's dock as Dock Q, as well as
12 Docks M, L, and K, which would later become the service dock, and the landing dock for
13 the boat launch.

14 26. I also hand-delivered plans for the Harbormaster's building to BCDC staff in 2005, and
15 did not receive any feedback concerning this submittal. However I did meet with Brad
16 McCrea who looked over the plans in a BCDC conference room. He pulled out the
17 HVAC, plumbing, electrical, and foundation sections, as this would not be of interest to
18 the Design Review Board. This was (I presumed) in preparation for the staff report for
19 Amendment 3.

20 27. On October 24, 2006, I hand-delivered separate ramp construction plans for the boat
21 launch to Andrea Gaut of BCDC. Originally part of the Phase 1 Construction Drawings,
22 Redwood City asked that I break it out. The landing dock components (floats, pilings,
23 and abutments) of the boat launch were included in the marina dock plans I had hand-

1 delivered to BCDC staff in October 2005, and the lighting, bioswales for washwater
2 treatment, and water were included in the Phase 1 Construction Drawings. There is no
3 single “boat launch plan” and the separate components which make up a boat launch
4 were included in their respective construction plans. Hence the plans that address the
5 boat launch are comprised of the ramp construction plans, landing dock and piling
6 construction plans, and utilities and lighting and apron/parking/turning area plans, all of
7 which I submitted to BCDC staff. Statement Exhibit 78 is an accurate copy of the
8 detailed ramp construction plans prepared by Bohley Consulting.

9 28. Throughout the construction process, and particularly when the boat launch was under
10 construction, Westpoint Harbor experienced issues with intruders and vandals. Hunters
11 and kayakers in particular attempted to use the incomplete boat launch. The boat launch
12 was finally complete and ready for public access in June 2017. Once the boat launch was
13 completed, I installed the signs which are currently in place.

14 29. In a February 2007 meeting, Adrienne Klein questioned whether BCDC staff had
15 received the dock plans. I said yes of course, and to address her concerns I resent a set of
16 the dock plans in March 2007. Statement Exhibit 48 is an accurate copy of the dock
17 plans I submitted to BCDC staff. Statement Exhibit 104 is an accurate photographic
18 copy of the letter I submitted to Brad McCrea of BCDC.

19 30. In June 2011, I again provided a complete set of dock plans. Statement Exhibit 106 is an
20 accurate copy of the letter that I resubmitted to BCDC staff in 2011. Statement Exhibit
21 107 is an accurate copy of the email and attachment that I sent to Tom Sinclair covering
22 the dock plans.

- 1 31. Each time I submitted the dock plans, I received no feedback from BCDC staff other than
2 thank you.
- 3 32. In June 2011, I also resubmitted the Phase 1 Construction Drawings to BCDC staff. I
4 emailed Tom Sinclair on June 14, 2011, and mailed him a hard copy of the documents on
5 a CD on June 27, 2011. Statement Exhibit 36 is an accurate copy of the Phase 1
6 Construction Drawings I submitted to BCDC staff. Statement Exhibit 35 is an accurate
7 copy of the email and envelope I sent to Tom Sinclair of BCDC.
- 8 33. After receiving Ellen Miramontes's September 8, 2011 letter concerning plan approval of
9 the Phase 1 Construction Drawings, I had the Phase 1 Construction Drawings altered to
10 incorporate her requests. I submitted these updated drawings to BCDC shortly thereafter.
11 Statement Exhibit 37 is an accurate copy of the updated Phase 1 Construction Drawings I
12 submitted to BCDC staff.
- 13 34. From 2008 to 2017, areas around Phase 2 and Phase 3 of Westpoint Harbor remained
14 unsafe for pedestrian access. Phase 3 was drying and staging Bay mud (I provided virgin
15 Bay mud for the Bair Island Restoration Project and other local needs), and Phase 2 also
16 was used for drying and conditioning mud, rock-crushing, stockpiling of riprap and
17 baserock, and the spreading of drying mud. The bittern-laden soil (hyper-saline) would
18 not support vegetation, multiple attempts at hydro seeding drought and salt-tolerant
19 grasses failed, and years were needed before even the hardiest plants would survive (each
20 rainy season would desalt a few inches of soil). Portions of the Phase 2 and Phase 3 areas
21 are ungraded, with very rough terrain, construction materials and equipment, open
22 trenches, and become impassable during the rainy season. This was comprehended in the
23 phasing plans associated with Amendment 3, and imported fill was used for planting of

1 bioswales. The landscaping layout in Phases 2 and 3 were undetermined until the
2 building design and layout were known. At this time Phase 2 is in process and most
3 landscaping in place, however no design for Phase 3 has started and the landscaping,
4 boardwalk and other elements are unknown. As a sequential project (a boatyard and retail
5 area doesn't make economic sense until the marina is built and operating) the Phases
6 (which describe uses, not time or geography) overlap. For this reason, Phase 2
7 construction elements are half-complete while Phase 1B is incomplete; and parts of
8 Phase 1A are geographically in the retail and boatyard areas.

9 35. Redwood City in issuing a conditional occupancy permit for Phase 1A required the future
10 Phase 2 and 3 areas to be restricted from public access for safety reasons. As BCDC
11 wanted paths in the future phases opened as soon as possible the City suggested a
12 temporary fence to separate paths from the construction areas (in which there is not
13 public access), and approved a fence design for this purpose. Before I was able to fence
14 unsafe areas of Phase 2 and Phase 3, Redwood City officials required that I restrict public
15 access to these areas. Statement Exhibit 41 is an accurate copy of the email and
16 attachments I received from Charles Jany of Redwood City discussing construction
17 hazards and contains some markings made after printing. Statement Exhibit 11 is an
18 accurate copy of the memorandum dated February 21, 2012 that I received from Charles
19 Jany of Redwood City concerning this restriction and includes markings I made after
20 receiving the document. Until recently, these areas were still being used for crushing,
21 stockpile of riprap and baserock, and the drying and conditioning of mud and were not
22 yet to correct elevation as more soil ("surcharge") was being added. The Phase 3 area
23 was, and remains today, an area of open, uneven and unimproved dirt with scattered

1 vegetation. Construction authorized in Phase 3 has not yet begun (although utilities and
2 other parts associated with Phase 1 are installed in this retail area).

3 36. To ensure I was taking all necessary steps to keep visitors safe, I discussed approaches
4 with an OSHA consultant. Based on the advice of the consultant, I ensured that safety
5 precautions and signage was placed beyond the Harbormaster's office to show that areas
6 under construction were closed. Passive controls included temporary construction
7 fencing, warning signs and hard-hat control. Active control was at the Harbormaster's
8 office as the last location with a live person who could monitor entry into the
9 construction area. Statement Exhibit 42 is an accurate copy of emails between myself
10 and Terence Kyaw of Redwood City showing my plan for these signs and includes
11 markings I made after printing the document for my hardcopy files.

12 37. I installed "future extension of the Bay Trail" signs in multiple locations around
13 Westpoint Harbor, in order to inform members of the public that these areas would be
14 open in the future, once construction was finished. Statement Exhibit 72 is an accurate
15 copy of emails between myself and Bay Trail Project Manager Laura Thompson
16 discussing these signs and includes markings I made after printing the document for my
17 hardcopy files.

18 38. "Members and Guests" signs are commonplace in marinas, both public and private.

19 39. I received approval from Redwood City in 2012 and I worked with BCDC staff to obtain
20 BCDC approval to install a temporary fence around the Phase 3 area (on the west side of
21 the basin), which was finally authorized by BCDC staff in Amendment No. Seven to the
22 Permit in May 2017.

1 40. It only became safe to open the pathways near Phase 2 and Phase 3 after the installation
2 of the fencing around the construction areas. Before the fencing was in place, members
3 of the public using the pathways could stray off the trail and into the construction areas,
4 where they would encounter open trenches, unfinished utilities, and other construction
5 hazards. The temporary fencing added around the construction areas ensures that
6 pedestrians remain safely on the pathways. Statement Exhibit 43 is an accurate copy of
7 the letter I sent to Steven Parker of Redwood City requesting to open the areas to public
8 access. Statement Exhibit 12 is an accurate copy of the letter I received from Steven
9 Parker of Redwood City allowing me to open the areas.

10 41. As pathways around Phase 2 and Phase 3 were recently opened for public access, I have
11 installed additional benches and trash containers in these areas in accordance with the site
12 furnishing plans.

13 42. In 2009, I coordinated with NOAA to update their Local Notice to Mariners to account
14 for Westpoint Harbor. The NOAA representatives I worked with informed me that they
15 would submit the required notification to BCDC, per their common practice. As a former
16 naval officer, I am very familiar with this process and the requirements for authorization,
17 installation, and reporting of navigational aids, and know the distribution of navigational
18 information is tightly and exclusively controlled by NOAA. Statement Exhibit 125 is an
19 accurate copy of emails between myself and Kate Fensterstock of NOAA discussing
20 corrections to NOAA's charts. Statement Exhibit 123 is an accurate copy of other emails
21 between myself and Kate Fensterstock of NOAA discussing NOAA's charts. Statement
22 Exhibit 124 is an accurate copy of the NOAA Local Notice to Mariners from May 2009.

- 1 43. BCDC staff attempted to add new and unacceptable conditions into iterations of
2 Amendment No. Five. For example, BCDC staff included a new requirement which
3 mandated swimming be allowed in the marina basin. Despite the clear, well-documented
4 risks to swimmers (electrocution from electrical leakage from vessels is a leading cause
5 of marina fatalities, and the USCG and DBW have active, ongoing campaigns to warn
6 against this dangerous practice), it took Respondents approximately a year to convince
7 BCDC staff to withdraw the demand.
- 8 44. There are 12-foot-wide paths in place on the east and west sides of Westpoint Harbor, but
9 10-foot-wide paths are in place on the south side (in front of the Harbormaster's office)
10 and on the two peninsular portions along Westpoint Slough leading to the boat entrance
11 to the harbor. The peninsular portions are formed from the old Leslie levees which are
12 barely wide enough to build ten foot paths. Similarly, the southern paths are limited by
13 the area between the marina basin and Cargill land, and with required road, parking and
14 bioswale widths, only a 10 foot path is possible.
- 15 45. The 12-to 15-foot-wide path measurement came from early documentation discussing the
16 public boardwalk ultimately planned for the Phase 3 area of Westpoint Harbor (replacing
17 a temporary 10' path needed to reach the guest dock). The two were combined to
18 indicate 12'-15' instead of 10'- 15' (paths and boardwalk).
- 19 46. There are fences separating Westpoint Harbor from neighboring properties placed by
20 Leslie Salt/Cargill decades before the Permit was issued. The fence and gate connection
21 adjacent to Westpoint Slough is now maintained pursuant to an agreement with the
22 Pacific Shores Center granting an easement to create a path across the "Cargill ditch."
23 On March 14, 2012, I was asked by Bill Moyer, manager of Pacific Shores Center, to

1 improve the fence between Westpoint Harbor and Pacific Shores in order to stop
2 individuals from crossing the unsafe area on and over riprap placed in the ditch.
3 Statement Exhibit 45 is an accurate copy of the email I received from Bill Moyer of
4 Pacific Shores Center. The gate is identical to the gates on the other crossings into the
5 marina, and was opened after the temporary safety fence was complete and I received
6 approval from Redwood City to open the area to public access.

7 47. Although the Violation Report/Complaint claims that BCDC staff confirmed with the
8 onsite manager for Pacific Shores Center that there were no impediments to completing
9 the trail between Pacific Shores Center and Westpoint Harbor, Yvette Montoya and
10 Carey Liggett, property managers for Pacific Shores Center both disputed this statement
11 when I spoke with them. The previous manager, Kris Vargas informed me that she was
12 pushed by BCDC's Adrienne Klein to assert that there was no impediment to opening the
13 gate. Ms. Vargas told me she was unwilling to make this statement and said she didn't
14 want to put the public or employees at risk.

15 48. By industry definition, guest berths (also known as "transient berths"), are open from
16 seaward for visiting boaters to tie-up boats for short periods (typically a day to a week).
17 For the purposes of this declaration, the terms "guest berth" and "guest dock" may be
18 used interchangeably. Because the period is short and the boaters typically stay with the
19 vessel, the guest berth process is simple, typically a single page agreement in all marinas.
20 These are not berths left open from the landward side for individuals to gain access to,
21 and have the same security and safety requirements as any other marina berth (in fact,
22 guest berths in most marinas are not dedicated guest berths, rather they are temporary
23 available regular berths which can be let out to guests). The guest berths at WPH are

1 dedicated "transient berths" and funded in part by a grant from the DBW, which in
2 accordance with standard industry practice, requires public access from the water, and
3 restricts access from land. Its intended for the boating public, not walking public for both
4 safety and security reasons. Statement Exhibit 50 is an accurate copy of the DBW Grant
5 with some markings added.

6 49. I have several dozen benches on paths, in view corridors and opposite the fairways, and
7 have installed eleven observation decks with safety rails. There is one at the top of each
8 gangway and additional decks to be included in Phase 3.

9 50. Westpoint Harbor provided guest berthing from the day it opened, normally using
10 available and unassigned berths. There has never been an instance when Westpoint
11 Harbor failed to provide guest berthing when requested. Statement Exhibit 55 is an
12 accurate copy of photographs of guest dock signs at Westpoint Harbor. These signs were
13 provided and required by the DBW and were placed facing the water so that members of
14 the public wishing to dock could easily identify the space.

15 51. The Harbormaster restroom doors are adjacent to the public path that runs between the
16 Harbormaster building and the marina basin. I use the standard restroom signage that is
17 found in any number of public accommodations, such as restaurants, hotels, and other
18 venues with public restrooms. Statement Exhibit 56 is an accurate copy of photographs
19 of the restroom signs at Westpoint Harbor.

20 52. Vandalism and other illegal behavior in the public restrooms and showers is a recurring
21 problem. Statement Exhibit 58 is an accurate copy of an email from Sonya Boggs
22 discussing such an incident, one of many security issues we have experienced. These
23 bathrooms contain showers used by boaters, and have attracted homeless persons at times

1 and others who are drawn to the isolated marina location. Unfettered access to these
2 restrooms raises a serious concern about public safety.

3 53. In past discussions with BCDC staff concerning signage of the restrooms, BCDC staff
4 agreed restroom and shower access could be controlled for the safety of tenants and
5 others, and provided suggested designs on signage for this purpose. These designs
6 included statements that an access key is available in the Harbormaster's office, and in
7 accordance, I installed a sign that states that a key to the restrooms is available in the
8 Harbormaster's office, prominently at the entryway to the Harbormaster building.
9 Statement Exhibit 60 is an accurate copy of a photograph of the restroom key sign at
10 Westpoint Harbor.

11 54. I submitted as-built signage plans to BCDC staff in May 2014, but did not receive any
12 response from BCDC staff. Statement Exhibit 67 is an accurate copy of the as-built
13 drawings prepared by Eggli Landscape Contractors Inc. and includes markings I made
14 after adding it to my hardcopy files.

15 55. BCDC staff provided Public Shores signs for me to install at Westpoint Harbor in 2011.

16 56. I installed public access and Bay Trail signs around the Phase 3 area promptly after
17 Redwood City authorized me to open the pathways in the area in July 2017. In total four
18 Bay Trail signs and eleven public shore signs are in place around Westpoint Harbor,
19 exceeding the requirements of the Permit.

20 57. I have explained the phased nature of the public parking at Westpoint Harbor multiple
21 times to BCDC staff over the course of several years as staff comes and goes.

22 58. Westpoint Harbor currently has fifteen signed spaces available for vehicle and boat trailer
23 parking to serve the boat launch. These spaces were completed and marked as public

1 during the summer of 2015 shortly after the parking area and road to the boat launch was
2 installed.

3 59. The rower's dock was not placed into the water at Westpoint Harbor until May 2016 and
4 was not completely installed until June 2016.

5 60. Kayaks and other small craft are launched from the rower's dock, while larger trailerable
6 boats are launched from the designated boat launch. This is the industry standard
7 practice for boat launches, as launching a kayak or other personal watercraft together
8 with larger motorboats and sailboats would be unsafe for all participants. Moreover the
9 ramp itself is deeply herringboned to provide traction for truck tires, and very dangerous
10 to walk on.

11 61. Physically, the guest docks (and all marina berthing docks) are far too high out of the
12 water to safely launch kayaks and personal watercraft (the height between the water and
13 the dock ("freeboard") is over 18 inches), and a swimmer cannot easily climb out of the
14 water at this height.

15 62. The California Department of Fish and Wildlife deferred to the USFWS in the creation of
16 signs informing the public of access restrictions on Greco Island and other protected
17 marshlands. I coordinated with USFWS officials accordingly over several years.
18 Statement Exhibit 88 is an accurate copy of emails between myself and a number of
19 USFWS staff members.

20 63. Special Condition II.F concerning shorebird roost habitat was added into the Permit to
21 mirror the mitigation requirements that were specified as a result of the CEQA process.

22 64. I have been the general contractor for the Westpoint Harbor project from inception.

- 1 65. I noted the Certification of Contractor Review requirement in the drawing packages and
2 bid sets provided to subcontractors. I also provided written reminders to subcontractors
3 regarding this certification. Statement Exhibit 113 is an accurate copy of the letter that I
4 sent to Paul Cianciarulo of O.C. Jones and Sons, Inc. discussing the certification.
- 5 66. W.L. Butler was the subcontractor for the Boatyard building A and I continued to oversee
6 other aspects of the development of Westpoint Harbor. I spent many hours with the site
7 managers for W.L. Butler, Jim Sanford and Christina Wagenseller, as well as the
8 architects at DES going over the Permit and the need for them to submit a Certification of
9 Contractor Review.
- 10 67. Westpoint Harbor halted landscaping from the time it was ordered to do so by Ellen
11 Miramontes in 2011, until the time Permit Amendment No. Six was signed and the
12 Permit was extended. Statement Exhibit 68 is an accurate copy of the email Maureen
13 O'Connor Sanders sent to Tom Sinclair of BCDC discussing the hold on landscaping,
14 with myself copied, and includes markings I made after printing the document for my
15 hardcopy files. Statement Exhibit 47 is an accurate copy of the Permit Amendment No.
16 Six that I signed.
- 17 68. I did not construct improvements from August 16, 2014, to April 10, 2016, during the
18 time that the Permit had expired and prior to renewal, and activity was focused on
19 obtaining the 45-day plan review for the boatyard building.
- 20 69. The space that BCDC staff alleges is an unauthorized fuel dock is made of standard
21 Bellingham float sections, all of which have internal chaises to accommodate hoses,
22 valves, and fittings, in this case to be purposed for a future fuel dock. Statement Exhibit
23 109 is an accurate copy of photographs of the dock area at Westpoint Harbor where

1 BCDC staff claims a fuel dock has been built. There is no fuel dispenser, hoses, tanks,
2 controls or other vestiges of a fuel dock.

3 70. Service docks are long linear floats allowing any combination of boats of various lengths
4 to be accommodated. These are called "side ties" and allow easy movement of vessels
5 by hand along the dock.

6 71. Most modern docks have the flexibility to adapt and accommodate different vessels and
7 configurations by moving sections slightly, limited by the layout dictated by pile
8 placement.

9 72. The berthing agreement was published online a year before the first boats were allowed
10 in the harbor in 2008, and used for every vessel berthed in the harbor. I hand-delivered
11 the Westpoint Harbor Management and Operations Manual to Brad McCrea of BCDC in
12 July 2007. BCDC staff even remarked on specific portions of the submittal when it was
13 delivered in 2007. However, when I later discussed this submittal with Tom Sinclair in
14 2012, he admitted that he had never looked at the document. Statement Exhibit 122 is an
15 accurate copy of the letter and attachments I sent to Tom Sinclair of BCDC concerning
16 berthing agreements and liveaboards. Statement Exhibit 120 is an accurate copy of the
17 letter I sent to Brad McCrea of BCDC concerning the Westpoint Harbor Marina
18 Management and Operations Manual.

19 73. As a result of the meetings with the U.S. Coast Guard, NOAA, and the Port of Redwood
20 City, I placed three "no wake" signs at the entrance to Westpoint Harbor. These signs
21 are situated such that boats can see them entering and departing, both port and starboard
22 in accordance with U.S. Coast Guard requirements (signs must be within the harbor
23 boundaries). These signs are not visible from the parking lot of Westpoint Harbor.

1 Statement Exhibit 80 is an accurate copy of photographs of no wake signs at Westpoint
2 Harbor.

3 74. I tested a mobile water treatment system at Westpoint Harbor for some months. The
4 testing is complete and the unit is now being dismantled. Water treatment is required for
5 all boatyards treating processed water, including wash-down water from a boat launch.

6 75. There is a small “community garden” at Westpoint Harbor. It is on the setback levee on
7 the south side of the property. Because the hyper saline soil in that area do not support
8 landscaping, the garden is on raised beds, and is a simple, small amenity for marina
9 tenants and visitors to enjoy, can be easily deconstructed, and harms no one.

10 76. The entrance to Westpoint Slough is under the control of the Port of Redwood City.
11 Redwood City has maintained a “no wake” buoy at the entrance for decades (Greco
12 Island became part of the Refuge in 1972). Statement Exhibit 79 is an accurate copy of
13 the email I received from Don Snaman of Redwood City discussing replacement of the
14 buoy.

15 77. The underground utilities in Westpoint Harbor were installed years before the pathways
16 and bioswales were completed, and are very large (12-inch water mains, 12,000 KVA
17 electric power). The utilities placement was keyed to the distance from basin slope in
18 the marina, and not moveable by the time roads, bioswales, and paths were installed.
19 Because the marina basin is not perfectly linear (as are the roads, parking, bioswales, and
20 paths) occasional small intrusions occur. Statement Exhibit 111 is an accurate copy of
21 photographs I took of the utilities at Westpoint Harbor and includes my handwritten
22 notes.

- 1 78. The three structures identified by BCDC staff in Allegation No. 12 of the Violation
2 Report/Complaint are floats, in this case “Unifloats” manufactured by Bellingham
3 Marine Industries. These structures are being used to hold personal watercraft, which is
4 commonplace in any marina. They are owned by individuals renting space at Westpoint
5 Harbor and are moved at their pleasure. The reason is practical: small watercraft cannot
6 stay in the water long because of bottom growth and exposure. Thus, small watercraft
7 are often stacked on such floats, and it is common for floats to move around.
- 8 79. The intrusion of utility structures such as fire hydrants into walkways is a common
9 occurrence. Because electrical guidelines require large sweeps on conduits carrying high
10 voltage, there is a limit on how close transformers and switchboards can be located to the
11 marina basin.
- 12 80. The plants BCDC staff saw when visiting the site in 2011 that appeared to be in poor
13 condition were in fact native varieties which normally turns brown in summer, even when
14 perfectly healthy. Concerning the apparent dysfunction of the sprinklers, the sprinklers
15 are on the normally downwind side of the path such that water only goes into the planted
16 areas. However in inclement weather (wind from the southeast) it is possible for
17 correctly functioning irrigation to land on the path during strong wind events that blow
18 the water toward the path.
- 19 81. I participated in multiple meetings with BCDC staff over the course of 2012 and 2013.
- 20 82. I attended a meeting with BCDC staff on December 13, 2012. I was accompanied by my
21 lawyer, Doug Aikins, a Westpoint Harbor employee, Doug Furman, my wife, Maureen
22 O’Connor Sanders, and my design consultant, Kevin Stephens. The BCDC staff present
23 at this meeting were Erik Buehmann, Brad McCrea, Ellen Miramontes, and John Bowers.

1 I recorded this meeting, with the consent of all participants. I provided this recording to
2 my attorney, Kevin Vickers, who then had the recording transcribed. Statement Exhibit
3 38 is an accurate copy of the transcript of the recording of the meeting between myself
4 and BCDC staff on December 13, 2012.

5 83. I attended another meeting with BCDC staff on May 23, 2013. Participants in the
6 meeting were my wife, Maureen O'Connor Sanders, and BCDC staff Adrienne Klein,
7 Erik Buehmann, Brad McCrea, Ellen Miramontes, and John Bowers. I recorded this
8 meeting, with the consent of all participants. I provided this recording to my attorney,
9 Kevin Vickers, who then had the recording transcribed. Statement Exhibit 24 is an
10 accurate copy of the transcript of the recording of the meeting between myself and BCDC
11 staff on May 23, 2013.

12 84. I attended yet another meeting with BCDC staff on August 21, 2013. I was accompanied
13 by my lawyer, Doug Aikins, a Westpoint Harbor employee, Doug Furman, and my wife,
14 Maureen O'Connor Sanders. The BCDC staff present at this meeting were Adrienne
15 Klein, John Bowers, Erik Buehmann, and Ellen Miramontes. Two BCDC interns, Simon
16 Hall and Noelle Simpson, were also present. I recorded this meeting, with the consent of
17 all participants. I provided this recording to my attorney, Kevin Vickers, who then had
18 the recording transcribed. Statement Exhibit 21 is an accurate copy of the transcript of
19 the recording of the meeting between myself and BCDC staff on August 21, 2013.

20 85. Statement Exhibit 76 is an accurate copy of correspondence between myself, my attorney
21 Kent Mitchell, Pete Bohley, and Jonathan Smith and Brad McCrea of BCDC.

22 86. Statement Exhibit 82 is an accurate copy of the letter I sent to Andrea Gaut of BCDC and
23 contains some markings I made after printing the document for my hardcopy files.

- 1 87. Statement Exhibit 100 is an accurate copy of the letter that I received from Andrea Gaut
2 and contains some markings I made after receiving the document.
- 3 88. Statement Exhibit 28 is an accurate copy of the letter that I sent to Andrea Gaut of
4 BCDC.
- 5 89. Statement Exhibit 108 is an accurate copy of the letter and attachment that my attorney,
6 Kent Mitchell, received from Jonathan Smith of BCDC.
- 7 90. Statement Exhibit 29 is an accurate copy of the emails between myself and Andrea Gaut
8 and contains some markings I made after printing the document for my hardcopy files.
- 9 91. Statement Exhibit 61 is an accurate copy of the plans I submitted to the Design Review
10 Board.
- 11 92. Statement Exhibit 32 is an accurate copy of the emails between myself and Fereyduon
12 Shehabi of Redwood City and contains some markings I made after printing the
13 document for my hardcopy files.
- 14 93. Statement Exhibit 59 is an accurate copy of a portion of the letter dated October 18, 2011
15 that I sent to Tom Sinclair and Ellen Miramontes of BCDC.
- 16 94. Statement Exhibit 16 is an accurate copy of the notes taken by Maureen O'Connor
17 Sanders and includes markings I made after receiving the document.
- 18 95. Statement Exhibit 86 is an accurate copy of the email I wrote to Tom Sinclair of BCDC.
- 19 96. Statement Exhibit 10 is an accurate copy of an excerpt of the email I received from Brad
20 McCrea of BCDC.
- 21 97. Statement Exhibit 65 is an accurate copy of emails between Kevin Stephens of KSDG
22 and Ellen Miramontes of BCDC that Kevin Stephens provided to me.

- 1 98. Statement Exhibit 114 is an accurate copy of emails between myself and Jim Pruder and
2 the July 22, 2014 checklist I created. This document also includes markings I made after
3 printing the document for my hardcopy files.
- 4 99. Statement Exhibit 71 is an accurate copy of the signage plan I created and provided to
5 BCDC staff.
- 6 100. Statement Exhibit 44 is an accurate copy of the Permit Amendment No. Seven.
- 7 101. Statement Exhibit 119 is an accurate copy of the Harbormaster building plans I submitted
8 to BCDC.
- 9 102. Statement Exhibit 62 is an accurate copy of the Permittee Checklist I received from
10 BCDC staff and includes markings I made after adding it to my hardcopy file.
- 11 103. Statement Exhibit 46 is an accurate copy of the Pacific Shores Easement documents I
12 provided to BCDC staff.
- 13 104. Statement Exhibit 85 is an accurate copy of the emails between myself, Tim Hurley of
14 BMS Design Group, and Andrea Gaut of BCDC.
- 15 105. Statement Exhibit 69 is an accurate copy of the plant legend provided to me by Bill
16 Moyer of Pacific Shores Center.
- 17 106. Statement Exhibit 53 is an accurate copy of the letter I received from Alex Francis of
18 ALX Technology and includes markings I made after adding it to my hardcopy file.
- 19 107. Statement Exhibit 54 is an accurate copy of the letter I received from Cathy Hammer of
20 Great American Insurance Co. and includes markings I made after adding it to my
21 hardcopy file.

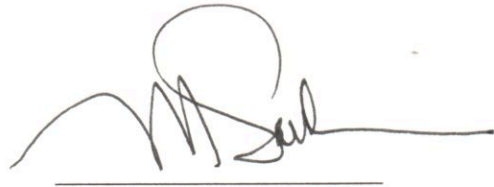
- 1 108. Statement Exhibit 52 is an accurate copy of the email I sent to Kevin Stephens and Silvia
2 Robertson of KSDG and includes markings I made after printing the document for my
3 hardcopy files.
- 4 109. Statement Exhibit 64 is an accurate copy of emails between myself, Kevin Stephens of
5 KSDG, and Ellen Miramontes of BCDC.
- 6 110. Statement Exhibit 63 is an accurate copy of emails between myself, Kevin Stephens of
7 KSDG, and Ellen Miramontes and Brad McCrea of BCDC and includes markings I made
8 after printing the document for my hardcopy files.
- 9 111. Statement Exhibit 74 is an accurate copy of the BCDC errata sheet faxed to me by my
10 attorney Kent Mitchell.
- 11 112. Statement Exhibit 83 is an accurate copy of emails between myself and Clyde Morris of
12 the Don Edwards San Francisco Bay National Wildlife Refuge.
- 13 113. Statement Exhibit 81 is an accurate copy of the letter I received from Clyde Morris of the
14 Don Edwards San Francisco Bay National Wildlife Refuge and includes markings I made
15 after adding the document to my hardcopy files.
- 16 114. Statement Exhibit 91 is an accurate copy of the letter I received from Andrea Gaut of
17 BCDC and includes markings I made after adding the document to my hardcopy files.
- 18 115. Statement Exhibit 89 is an accurate copy of the engineering drawing produced by Bohley
19 Consulting measuring the slope at Westpoint Harbor.
- 20 116. Statement Exhibit 90 is an accurate copy of the Cargill Embankment License Agreement.
- 21 117. Statement Exhibit 93 is an accurate copy of the Mitigation Plan prepared by Skid Hall for
22 Westpoint Harbor, though it is missing some pages.

- 1 118. Statement Exhibit 99 is an accurate copy of an enlarged excerpt of the Westpoint Harbor
2 Site Preparation Plans, with a red circle to show where mitigation is discussed.
- 3 119. Statement Exhibit 101 is an accurate copy of the letter I sent to Mark D'Avignon of the
4 USACE and includes markings I made after adding the document to my hardcopy files.
- 5 120. Statement Exhibit 97 is an accurate copy of a photograph I took of the ditch at Westpoint
6 Harbor.
- 7 121. Statement Exhibit 103 is an accurate copy of the Redwood City Inspection Card I
8 received from Redwood City.
- 9 122. Statement Exhibit 110 is an accurate copy of the letter I sent to Andrea Gaut of BCDC
10 and includes the markups I added after placing it in my hardcopy files.
- 11 123. Statement Exhibit 115 is an accurate copy of the letter sent by Doug Aikins to Brad
12 McCrea, Adrienne Klein, Erick Buehmann, and John Bowers of BCDC, with myself
13 copied. This document includes markings I made when placing it in my hardcopy files.
- 14 124. Statement Exhibit 116 is an accurate copy of the letter I sent to Andrea Gaut of BCDC.
- 15 125. Statement Exhibit 117 is an accurate copy of emails between myself and Erik Buehmann
16 of BCDC and includes markings I made when printing the document for my hardcopy
17 files.
- 18 126. Statement Exhibit 66 is an accurate copy of the Westpoint Harbor Marina Existing and
19 Public Access Plans produced by KSDG.
- 20 127. Statement Exhibit 102 is an accurate copy of the Memorandum prepared by Anchor QEA
21 concerning wetlands mitigation measures.
22
23

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct:

3 10/19/17 REDWOOD CITY
4 SAN MATEO COUNTY

5 Date and Place
6

A handwritten signature in black ink, appearing to read 'Mark Sanders', written over a horizontal line.

Mark Sanders